THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.28141 OF 2005

DATED:2.1.2006

Between:

Damisetti Srinivasa Rao

…Petitioner

And

The District Collector,

Nellore District, Nellore and another

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.28141 OF 2005

ORDER:

The petitioner is statedly owner of land admeasuring Acs.0.37 out of Acs.4.75 comprised in patta No.24, S.No.963/3 situated at Kavali Bit-I of Kavali Municipality. There is a road on the northern side of petitioner's site which is being used by the residents in the neighbourhood to go towards south of the petitioner's site, where there is a road. Therefore, there is no necessity for acquiring any land for laying the road. However, the first respondent issued a notification dt.18.10.2005 under Section 4(1) of the Land Acquisition Act, 1894 (for short, the Act) proposing to acquire an extent of 225 Sq.yards for the road. The enquiry under Section 5-A of the Act was dispensed with in exercise of powers under Section 17(4) of the Act. On coming to know about the notification, the petitioner submitted a representation on

7.11.2005 *inter alia* contending that there is no necessity to acquire the land of the petitioner, that if such acquisition is made, the petitioner's land would be divided into two halfs rendering it useless for the small scale industry for the purpose of which it was purchased. Without considering the representation, the first respondent issued notice dt.29.10.2005 under Section 9(1) of the Act, which was published in Eenadu Telugu daily on 15.11.2005. Assailing the notification under Section 4(1) of the Act, present Writ Petition is filed.

It is contended by the learned counsel for the petitioner that enquiry under Section 5-A of the Act was dispensed with in a mechanical manner without application of mind and therefore the same is unsustainable. The publication of notice under Section 9(1) of the Act without considering the representation of the petitioner is illegal and that in the absence of any known public purpose, the proposed acquisition is unsustainable.

Learned Assistant Government Pleader for Revenue (Land Acquisition) while opposing the Writ Petition brought to the notice of this Court that this Court has already dismissed a Writ Petition filed challenging the same notification dt.18.10.2005. A copy of the order in W.P.No.23304 of2005 dt.28.10.2005 is placed before this Court. In the said Writ Petition, similar grounds were urged. Dealing with the submissions, while dismissing the Writ Petition, this Court observed:

> The petitioners' site in S.No.963/3C is situated on south-eastern side of the canal abutting the six feet wide road. There is a ten feet wide road on the northern side of the canal dividing residential portion. The road of six feet width on the southern side of the ten feet width road, on the northern side of canal, is thoroughfare from the main road of thirty feet wide road on the southern road to twenty feet wide road on the north side. It is submitted by the learned Government Pleader for Land Acquisition, if the road is not widened on the southern side road from the existing six feet width, it would cause inconvenience for the people to go from twenty feet vide road to thirty feet wide road and vice versa. They have to take detour through national highway to go to either side.
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> There is force in the submission of the learned Assistant Government Pleader. Present acquisition is admittedly for laying road so as to widen the existing six feet road, which by any standards cannot be said to be sufficient. Therefore, this Court is not able to agree with the submission of the learned counsel for the petitioners that there is no public purpose for acquiring the land. The reliance placed on the decisions of the Supreme Court is misconceived. These decisions lay down that the acquisitioning authority should properly consider all the aspects before exercising power under Section 17(4) of the Act dispensing with enquiry under Section 5A of the Act. In this case, after hearing the learned counsel for the petitioners and the learned Assistant Government Pleader for Land Acquisition, this Court is convinced that there is urgency to lay the road as proposed and the first respondent cannot be said to have dispensed with the enquiry under Section 5A of the Act in a routine manner.

Following the judgment of this Court in the Writ Petition referred to hereinabove, this Writ Petition is also dismissed.

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(V.V.S.RAO, J)

2.1.2006

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